

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 27 through May 3, 2007

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

BI-ECONOMY MARKET, INC. v HARLEYSVILLE INSURANCE CO. OF NEW YORK, et al.:

4TH Dept. App. Div. order of 2/2/07; affirmance; leave to appeal granted by App. Div., 4/20/07; Rule 500.11 review pending; INSURANCE - ALLEGED BREACH OF TERMS OF INSURANCE CONTRACT - INSURER'S LIABILITY FOR CONSEQUENTIAL DAMAGES - BUSINESS INTERRUPTION INSURANCE; PARTIAL SUMMARY JUDGMENT; Supreme Court, Monroe County, among other things, granted defendants' motion for leave to amend their answer and for partial summary judgment, allowed defendants leave to amend their answer to raise the defense of contractual exclusions for consequential damages, dismissed plaintiff's second cause of action set forth in plaintiff's first amended complaint, and denied plaintiff's cross motion for partial summary judgment; App. Div. affirmed.

OPTIC PLUS ENTERPRISES, LTD. v BAUSCH & LOMB, INC., et al.:

4TH Dept. App. Div. order of 2/2/07; modification with dissent;
leave to appeal granted by App. Div., 4/20/07;

DISCLOSURE - MATERIAL EXEMPT FROM DISCLOSURE - ATTORNEY-CLIENT
PRIVILEGE WHETHER APPELLATE DIVISION ERRED IN GRANTING IN PART
PLAINTIFF'S MOTION TO COMPEL AND DIRECTING THAT THE DEFENDANTS
PRODUCE THE FILES OF THEIR INSIDE COUNSEL FOR AN IN CAMERA REVIEW
BY THE SUPREME COURT TO DETERMINE IF CERTAIN DOCUMENTS SET FORTH
IN DEFENDANTS' "PRIVILEGE LOG" SHOULD BE DISCLOSED IN A BREACH OF
CONTRACT ACTION;

Supreme Court, Monroe County denied that part of plaintiff's
motion seeking an in camera review of documents withheld by
defendants on the ground of privilege, granted in part
defendants' cross motion to compel and granted a conditional
order of preclusion; App. Div. modified by granting plaintiff's
motion in part, affirming as so modified and remitting the matter
to Supreme Court for an in camera review of the documents set
forth in defendants' "Privilege Log" to determine if any of the
documents are subject to disclosure.

RICHARDS, PEOPLE ex rel. v WEST; RICHARDS, MATTER OF, v WEST:

3RD Dept. App. Div. orders of 3/8/07; sua sponte examination of
whether the orders appealed from finally determine the
proceedings within the meaning of the Constitution and whether
there is any jurisdictional basis for an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - APPELLATE DIVISION DENIAL OF
MOTION FOR A JUDGMENT IN DEMAND FOR UNIFORMITY OF INTERPRETATION;
PRISONS AND PRISONERS;

App. Div. denied two separate motions each seeking a judgment in
demand for uniformity of interpretation.